

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application. No.	:	10/718,376	Confirmation No. 9538
Applicant	:	Richard C. Fickle	
Filed	:	November 19, 2003	
TC/A.U.	:	2623	
Examiner	:	Son P. Huynh	
Docket No.	:	7593.P002	
Customer No.	:	8791	

Commissioner for Patents
PO Box 1450
Alexandria VA 22313-1450

RESPONSE TO RESTRICTION REQUIREMENT

Sir:

In the Office Action mailed April 8, 2008, the Examiner contends that the reply is considered to be incomplete because the reply does not include (i) an election of a species or invention to be examined and (ii) the identification of the claims encompassing the elected species or elected invention. Applicant respectfully disagrees for the following reasons.

First, applicant maintains traversing the restriction requirement because it was defective as pointed out in the previous response.

Second, the Examiner merely states that the application contains claims directed to patentably distinct species illustrated in figures 1-7 (Office Action, page 2, lines 20-21). A mere statement that claims directed to patentably distinct species is insufficient. In making a requirement for restriction in an application claiming plural species, the examiner should **group** together species considered clearly unpatentable over each other. MPEP 806.04(h). Without a proper grouping, or at least a statement regarding the number of patentably distinct species, Applicant is unable to make an election.

Applicant submits that a mere statement that “the application contains claims directed to the following patentably distinct species illustrated in figures 1-7” is ambiguous because there may be many different groupings of species. For example, there may be 7 groups of species where each species is represented by each figure; or there may be 6 groups of species where

figures 1 and 2 belong to the same species, and figures 3 through 7 belong to 5 different species; or there may be 2 groups of species where figures 1, 3, 4, 6 belong to one species and figures 2, 5, and 7 belong to another species.

Since the restriction requirement is defective by not giving a **grouping of claims or species**, or not providing the specific classifications or fields of search, or untimely issued, Applicant cannot make an election.

However, in compliance with 35 USC 121, Applicant elects:

- (i) the following figures: 1, 2, 3, 4, 5, and 6; and
- (ii) identification of the claims encompassing the elected figures: claims 1-40.

Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: June 9, 2008

By /THINH V. NGUYEN/

Thinh V. Nguyen
Reg. No. 42,034
Tel.: (714) 557-3800 (Pacific Coast)

12400 Wilshire Boulevard, Seventh Floor
Los Angeles, California 90025